

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. JOSIAH STUTZMAN, an Individual, )

Plaintiff, )

V. )

Case No.: 4:20-cv-00550-GKF-JFJ

1. JOHN DOE, an Individual; )

2. DYLAN'S EQUIPMENT LEASE, LLC, )

a Foreign Limited Liability Company; and )

3. PROGRESSIVE CARRIERS CO., a )

Foreign For-Profit Corporation. )

Defendants. )

## **NOTICE OF REMOVAL**

In accordance with the provisions set forth in 28 U.S.C. §§ 1441, 1446, *et seq.*, notice of removal is given as follows: Defendant Progressive Carriers Co. removes this action from the District Court of Creek County, Case No. CJ-2020-183 (“State Court Action”), to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, *et seq* and 28 U.S. Code § 1367. Pursuant to 28 U.S.C. §1446 and LCvR 81.2, a copy of the docket sheet for the State Court Action is attached hereto as Exhibit 1. Copies of all documents served and/or filed in the State Court Action are attached hereto as Exhibits 2-8.

1. The Plaintiff alleges that he suffered damages as a result of automobile negligence caused by Defendant John Doe, an unidentified driver. Plaintiff further alleges Defendant John Doe was hauling a trailer leased and/or owned by Defendant Dylan's Equipment Lease, LLC and operating a tractor-trailer leased and/or owned by Defendant Progressive Carriers Co. at the time of the alleged accident.

2. This case was filed in the District Court of Creek County, State of Oklahoma, on July 27, 2020. Progressive Carriers Co. was served with Summons and the Petition on August 11, 2020 through its registered service agent, Nilufar Shukurova, in Aurora, Illinois. Pursuant to 28 U.S.C. § 1446(b), Defendant is within the one year limitation for removing this action.

3. Upon information and belief, Defendant John Doe has not been served with the Summons and/or Petition. As such, his consent for removal is not necessary. 28 U.S.C. § 1446(b).

4. Upon information and belief, Defendant Dylan's Equipment Lease, LLC has not been served with the Summons and/or Petition. As such, its consent for removal is not necessary. 28 U.S.C. §1446(b).

5. On or about October 2, 2020, counsel for Defendant Progressive Carriers Co. received an email from Plaintiff's counsel advising that Danker Trucking, Inc., a domestic for-profit corporation, was inadvertently named in this lawsuit and advising that an Amended Petition had been sent for filing. Plaintiff's counsel forwarded a copy of the Amended Petition with the email on or about October 2, 2020.

6. In the Petition filed on July 27, 2020, Plaintiff alleged that John Doe was operating a tractor-trailer leased and/or owned by Danker Trucking, a domestic for-profit corporation.

7. Plaintiff filed his Amended Petition on October 5, 2020, in which the allegations against Danker Trucking, a domestic for-profit corporation, were no longer being asserted, and Danker Trucking was removed from the style of the case.

8. Therefore, complete diversity of citizenship as required by 28 U.S.C. §1332 was not effectuated until October 2, 2020.

9. Pursuant to 28 U.S.C. § 1446(b), Defendant has filed this Notice of Removal within the required 30 days after receipt by the Defendant's "of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based."

10. The lawsuit filed by Plaintiff alleges damages "in excess of \$75,000.00". Therefore, the damages sought by Plaintiff exceed the threshold for diversity jurisdiction.

11. The District Court of Creek County, the court in which this action is pending, is located within this Court's jurisdiction.

12. Removal of this action is proper under 28 U.S.C. §§ 1441 and 1446, *et seq.*, because this Court has original diversity jurisdiction over this matter, given that:

a. The amount in controversy exceeds \$75,000.00, exclusive of interest or costs. Defendant Progressive Carriers Co. first knew the amount in controversy exceeded \$75,000.00 when it was served with Plaintiff's Petition and Summons, on its registered service agent or about August 11, 2020, and that this case was ripe for removal and could actually be removed through service of Plaintiff's Amended Petition on its counsel on or about October 2, 2020.

b. Upon information and belief, Plaintiff Josiah Stutzman is resident of Oklahoma County, Oklahoma, and intends to remain in Oklahoma.

c. Pursuant to 28 U.S.C. § 1441(b), the citizenship of John Doe shall be disregarded for the purposes of removal.

d. Defendant Dylan's Equipment Lease, LLC is a limited liability corporation existing under and by virtue of the laws of the State of Illinois, with its principle place of business in the City of Burr Ridge, Illinois, County of DuPage, Illinois.

e. Upon information and belief, Defendant Dylan's Equipment Lease, LLC, has not been served. Therefore, pursuant to 28 U.S.C. § 1441(b), Defendant Dylan's Equipment and Lease, LLC's consent to removal of this action is not required as it has not been properly joined and served in this matter.

f. Defendant Progressive Carriers Co., is a company existing under and by virtue of the laws of the State of Illinois, with its principle place of business in the City of Aurora, Illinois, County of DuPage, Illinois.

g. Accordingly, there is complete diversity of citizenship in this action, and this case is removable on that basis.

13. Written notice of the filing of this Notice of Removal is being promptly given to Plaintiff and a Notice of Filing of Notice of Removal is promptly being filed with the clerk of the District Court of Creek County, as required by 28 U.S.C. § 1446(d).

14. For the reasons stated above, Defendant removes this action from the District Court of Creek County, to this Honorable Court.

Respectfully submitted,

/s Brian L. Carter

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*Attorneys for Defendant Progressive Carriers Co.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2020, I mailed a copy to counsel via USPS. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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/s Brian L. Carter